IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 05.09.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.MANIKUMAR

Habeas Corpus Petition No.643 of 2006

Balan ... Petitioner

Vs.

1.The State of Tamil Nadu,
rep. by its Secretary to Government,
Prohibition and Excise Department,
Fort St. George, Chennai-9.

2.The District Magistrate and
District Collector,
Vellore District,
Vellore. .. Respondents

Petition under Article 226 of the Constitution of India for the issuance of a Writ of Habeas Corpus to call for the records relating to the detention order C3.Tha.Ka.Order No.60/2006 dated 22.06.2006 passed by the second respondent, quash the same and direct the respondents to produce the detenu Sivaji, son of Chinna Govindan, now confined at Central Prison, Vellore and set him at liberty.

For Petitioner : Mr.P.Krishnan
For Respondents: Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

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O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the cousin brother of the detenu by name Sivaji, who is detained as a ''Bootlegger" as contemplated under Section 3(1) the Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers and Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugned detention order dated 02.06.2006, challenges the same in this Petition.

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2. Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor for the respondents.

3. At the foremost, learned counsel for the petitioner submitted that in view of the specific assertion by the detaining authority that the bail application moved by the detenu is pending before this Court in Crl.O.P.No.14539/2006, it is not known as to how the detaining authority has arrived at a conclusion that he may likely to come out on bail by filing a bail application before the same Court or higher Court. According to the learned counsel, this aspect shows non application of mind on the part of the detaining authority while passing the order of detention.

4. In the light of the said contention, we have verified the necessary averments, which are available at para 5 of the grounds of detention. As rightly pointed out by the learned counsel for the petitioner, the detaining authority has noted that the bail application filed before this Court in Crl.O.P.No.14539 of 2006 is pending on the date of passing of the detention order. In such circumstances, it is not clear, as to how the detaining authority has arrived at a conclusion that the detenu is likely to come out on bail by filing bail application. In the absence of proper explanation and in view of the fact that the bail application filed before this Court is pending on the date of passing of the detention order, we hold that the decision arrived at by the detaining authority for passing an order under Act 14 of 1982, cannot be accepted. On this ground, we quash the impugned order of detention.

4. Accordingly, the Habeas Corpus Petition is allowed and the impugned order of detention is set aside. The detenu is directed to be set at liberty forthwith from the custody unless he is required in some other case or cause.

raa

Sd/
Asst.Registrar

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/true copy/

Sub Asst.Registrar

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To

1. The Secretary to Government, State of Tamil Nadu, Prohibition and Excise Department, Fort St. George, Chennai-600 009.

2.The District Magistrate and District Collector, Vellore District, Vellore.

3. The Superintendent, Central Prison, Vellore.
(In duplicate for communication to detenu)

4. The Joint Secretary to Government, Public (Law and Order) Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

+ one cc to Mr. P. Krishnan, Advocate sr no. 41020

NA(CO)
NM(13.09.2006)

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